

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RONNIE LEE RATLIFF, JR.,

Plaintiff-Appellee,

v

COLLEEN MARIE RATLIFF, n/k/a COLLEEN  
WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED  
December 13, 2005

No. 263427  
Jackson Circuit Court  
LC No. 99-096845-DM

Before: Donofrio, P.J., and Zahra and Kelly, JJ.

PER CURIAM.

In this custody dispute, defendant appeals by right from the trial court's order granting plaintiff's motion seeking a change in custody of the parties' two minor children from defendant to plaintiff and the trial court's subsequent order denying defendant's motion for joint legal custody. We affirm.

I. Basic Facts and Procedure

Plaintiff and defendant were divorced in September, 2000, and defendant was awarded sole physical and legal custody of the couple's minor children. In February, 2004, the children were placed with their father pending an investigation by the Family Independence Agency (FIA)<sup>1</sup> into allegations of sexual and physical abuse in defendant's home. The alleged sexual abuse involved a relative of defendant's husband and her daughter. The alleged physical abuse involved defendant and her daughter. The FIA concluded that defendant had not failed to protect her daughter from the alleged sexual abuse. The FIA also concluded that a preponderance of evidence showed defendant mother had physically abused her daughter in February, 2004. On May 4, 2005, the court – taking into account various reports submitted by Friend of the Court and the Child and Parent Center – entered an order granting plaintiff sole physical and legal custody of the children. The trial court further ordered that defendant's visitation remain

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<sup>1</sup> The FIA became the Department of Human Services on March 15, 2005.

supervised and that the children participate in counseling, which defendant was allowed to attend.

On May 11, 2005, defendant filed a motion for unsupervised parenting time and joint legal custody. Defendant argued that, pursuant to a May 6, 2005, report by the Child and Parent Center, defendant should be granted liberal unsupervised visitation and be involved in the making of important decisions regarding the welfare of the children. Plaintiff responded by arguing, in part, that defendant had failed to allege any change in circumstances from the trial court's May 4, 2005, order awarding him custody. On June 1, 2005, the trial court entered an order denying defendant's motion for joint legal custody because it found "no material change in circumstances." This appeal followed.

## II. Analysis

### A. Change Of Custody Without An Evidentiary Hearing

Defendant first asserts that the trial court abused its discretion by awarding plaintiff sole physical and legal custody without an evidentiary hearing. We disagree.

#### 1. Standard of Review

All custody orders must be affirmed on appeal unless the trial court's factual findings were against the great weight of the evidence, the court committed an abuse of discretion, or the court made a clear legal error on a major issue. MCL 722.28; *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994); *Harvey v Harvey*, 257 Mich App 278, 283; 668 NW2d 187 (2003). A trial court's findings as to the existence of an established custodial environment and as to each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction. *Fletcher, supra* at 879. Discretionary matters are reviewed for an abuse of discretion. *Vodvarka v Grasmeyer*, 259 Mich App 499, 507-508; 675 NW2d 847 (2003). An abuse of discretion occurs when the result is so grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment or the exercise of passion or bias. *Fletcher, supra* at 879-880. Questions of law are reviewed for clear legal error. A trial court commits legal error when it incorrectly chooses, interprets or applies the law. *Id.* at 881; *Vodvarka, supra* at 508.

The child custody act of 1970, MCL 722.21 *et seq.*, governs child custody disputes between parents, agencies or third parties. *Harvey, supra* at 291. Above all, custody disputes are to be resolved in the child's best interest, as measured by the factors set forth in MCL 722.23. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). Furthermore, as noted by defendant: "If the parents agree on joint custody, the court shall award joint custody unless the court determines on the record, based upon clear and convincing evidence, that joint custody is not in the best interest of the child." MCL 722.26a(2).

#### 2. Evidentiary Hearing Requirement

Defendant quotes *Schlender v Schlender*, 235 Mich App 230, 233; 596 NW2d 643 (1999), in which this Court stated: "[I]t is improper for a trial judge to decide the issue of custody on the pleadings and the report of the friend of the court when no evidentiary hearing

was held.” *Schlender, supra* at 232-233, was concerned, though, with the blanket deprivation of a party’s right to an evidentiary hearing through application of a local court rule or administrative rule that is contrary to a Michigan Court Rule. Furthermore, the section of *Schlender* quoted by defendant cites to *Stringer v Vincent*, 161 Mich App 429, 432; 411 NW2d 474 (1987), in which this Court found that an evidentiary hearing was needed in a custody dispute where the trial court adopted the FOC’s report and recommendations without such a hearing. However, this Court’s decision in *Stringer* was based on the absence of *any* admitted evidence regarding custody in that case. *Stringer, supra* at 432-433. Specifically, this Court held: “There was no evidence presented to the court, and, thus, the trial judge should have refused to decide the matter until the parties scheduled an evidentiary hearing *or stipulated to use of the report of the friend of the court as evidence.*” *Id.* at 433 (emphasis added). The parties here stipulated to the admission of the FOC report as evidence in regarding custody in a March 10, 2004, Order for Investigation by Friend of the Court. Therefore, the trial court had evidence before it concerning custody with which to make its decision.

MCR 3.210(C)(6) states that the trial court must give the parties an opportunity to file objections to a submitted FOC report before a decision is made concerning custody. In this case, although defendant filed objections to the FOC report and requested an evidentiary hearing, she subsequently stipulated to the adjournment of such a hearing “until another hearing date is requested by the parties.” Furthermore, during the March 16, 2005, hearing regarding custody, defendant explained that she had stipulated to the adjournment because she “didn’t feel it was realistic at the time to object to the Friend of the Court order in its entirety, and proceed with an evidentiary hearing with regard to custody and parenting time, when it would be a little fruitless since she can’t have unsupervised parenting time, she’s not going to have custody.” Although defendant noted “some disagreements” with the statements and conclusions in the FOC report she added that she could understand if the Court enters an order for plaintiff to have physical custody but requested joint legal custody. Significantly, at no time during the custody hearing did defendant request an evidentiary hearing regarding the FOC findings or recommendations.

MCR 3.210(C)(8) allows for the trial court’s determination that an evidentiary hearing is unnecessary regarding a postjudgment motion to change custody where “there are no contested factual issues that must be resolved in order for the court to make an informed decision on the motion.” On appeal, defendant concedes that she waived her right to an evidentiary hearing concerning physical custody but asserts that she did not do so as to legal custody. While defendant did not formally state that she withdrew her objections to the FOC report, her action in stipulating to the indefinite adjournment of the evidentiary hearing and her failure to request one at the March 16, 2005, hearing waived such objections. Without any renewed request by defendant to hold an evidentiary hearing to dispute the FOC’s findings, the trial court appropriately found that defendant had withdrawn her objections to the FOC report, which was admissible evidence regarding custody of the parties’ children pursuant to the parties’ stipulation. Thus, there were no contested factual issues that would require an evidentiary hearing before the trial court rendered a decision regarding either physical or legal custody.

In determining that plaintiff should receive both sole physical and legal custody, the trial court noted that it was not adopting the FOC’s recommendation of joint legal custody, in part, because of a report from Renee Ingraham, Program Coordinator with the Child and Parent Center (CPC), which supervised defendant’s visitations with the children. The February 7, 2005

report evidenced that, along with concerns regarding defendant's parenting and physical discipline, defendant was unable to discuss important issues with the children. Although defendant argues that the trial court had an updated March 15, 2005, progress report from Ingraham noting defendant's improvements, we note that the March report reiterates Ingraham's concern that defendant "continues to interact with [the children] on a peer level." Ingraham further noted that defendant "still struggles with the basics of parenting" and "continues to demonstrate a risk of harm to the children." The trial court noted that defendant had been convicted of child abuse. Given this evidence, the trial court's determination that joint legal custody was not in the children's best interests is supported by clear and convincing evidence and was not violative of fact or logic; therefore, the trial court did not abuse its discretion in awarding sole legal custody to plaintiff.

## B. Material Change in Circumstances

Defendant next asserts that the trial court abused its discretion by denying her subsequent motion for joint legal custody, filed one week after entry of the May 4, 2005, custody order, and erred in finding that no material change in circumstances to authorize the trial court's review of the existing order. We disagree.

### 1. Standard of Review

A trial court can modify an existing custody order only where the moving party establishes by a preponderance of the evidence that "proper cause" or a "change in circumstances" supports a finding that a change in custody is in the child's best interest. MCL 722.27(1)(c); *Vodvarka*, *supra* at 508-509 (citation omitted). If this initial burden is not met, "the trial court is not authorized by statute to revisit an otherwise valid prior custody decision and engage in a reconsideration of the statutory best interest factors." *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994); MCL 722.27(1)(c).

### 2. Change in Circumstances

Defendant argues that proper cause and a change in circumstances existed sufficient for the trial court to revisit the existing custody order entered May 4, 2005, based on the recommendations in a May 6 2005 report from Ingraham at the CPC. This Court in *Vodvarka*, *supra* at 511-512, found that "to establish a 'change in circumstances,' a movant must prove that, *since the entry of the last custody order*, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child's well-being, have materially changed" (emphasis added). This Court specifically held that "circumstances must have changed since the custody order at issue was entered," and that a "movant cannot rely on facts that existed before entry of the custody order to establish a change of circumstances. *Id.* at 514. Ingraham's May 6, 2005, report, upon which defendant relies, reviewed defendant's visits from March 16 through

May 4, 2005, the latter being the date the previous custody order was entered. Thus, pursuant to *Vodvarka*, defendant cannot rely on these facts to demonstrate a change in circumstances. Therefore, the trial court's finding that defendant failed to demonstrate a change in circumstances from the May 4, 2005, custody order entered two weeks before the May 18, 2005 hearing on defendant's motion was not against the great weight of the evidence.

Affirmed.

/s/ Pat M. Donofrio

/s/ Brian K. Zahra

/s/ Kirsten Frank Kelly